IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7144 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RASTRIYA MAZDOOR UNION

Versus

UNION OF INDIA

Appearance:

MR MUKUL SINHA for Petitioner

MR MR SHAH for Respondent No.1

SERVED BY RPAD - (R) for Respondent No. 5

MR DG CHAUHAN for Respondent No. 3

MR KM THAKKAR for M/S TRIVEDI & GUPTA for Respondent No. 2.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2000

ORAL JUDGEMENT

Learned advocate Dr. Mukul Sinha is appearing on behalf of the petitioner. Learned advocate Mr.M.R. Shah is appearing on behalf of Respondent No.1. Learned advocate Mr. K.M. Thakkar for M/s. Trivedi and Gupta Advocates is appearing on behalf of Respondent No. 2. In the present petition, Rule was already issued and interim relief was granted by this court on 21st September, 1999. On behalf of Respondent No.2, affidavit-in-reply has been filed against the petition on 25th February, 2000. With the consent of both the learned advocates, the present petition has been heard finally today.

2. In the present petition, the petitioner Union has challenged the order of Respondent No.1 dated 18th August, 1999 wherein it has been decided by the Respondent No.1 not to refer the industrial dispute, which was raised by the petitioner Union, for adjudication to the Industrial Tribunal. The brief facts of the present petition is that the Respondent ONGC carries out an establishment at Hazira, near Surat where it processes L.P.G, Kerosene, N.G.L. etc. and markets these products. For marketing purposes, loading of the products in trucks, railway etc. is needed and for this purpose, the respondent ONGC employed a large number of employees under the guise of contract labour. The Central Government had abolished contract labour in the establishments of Respondent ONGC in various operations. The petitioner Union had approached this Hon'ble Court by way of filing Special CA 7520 of 1997 and Special CA 4508 of 1997. In both the petitions, this Court (Coram: Mr. Justice R. Balia) had passed an order dated 9th February, 1999 wherein a similar grievance was raised by the petitioner Union before this court. In the earlier two petitions also, there was a demand of the workers of different categories represented by the petitioner Union about the abolition of labour contract system with the respondent company, Oil and Natural Gas Corporation. In the two petitions, this court had passed an order directing the petitioner Union to invoke machinery under the provisions of Industrial Disputes Act and for that, necessary direction had been issued by this court. In pursuance to the order passed by this court on 9th February, 1999 in Special CA 7520 of 1997 and Special CA 4508 of 1997, the petitioner Union has raised industrial dispute by letter dated 23rd June, 1999 addressed to Respondent No.2 and 3 alongwith the list of concerned workmen. Thereafter, the conciliation proceedings were initiated by the Conciliation Officer at Baroda and the petitioner Union had submitted justification in support

of their demand on 12th July, 1999. Thereafter, the Conciliation Officer had come to the conclusion that there is no possibility of any settlement and therefore he submitted the Failure Report under Section 12 Sub-clause (H) of the ID Act, 1947 by letter dated 30th July, 1999. After receiving the Failure Report from the Conciliation Officer, the Respondent No.1 had decided by order dated 18th August, 1999 under Section 12 Sub-clause 5 of the ID Act, 1947 and come to the conclusion that prima facie this Ministry does not consider this dispute fit for the following reasons. The reasons are as under:-

> "The Regional Labour Commissioner (Central), Ahmedabad has already conducted a fact-finding inquiry pursuant to the oral judgment of Hon'ble High Court of Gujarat in Special CA Nos. 2573, 2574, 3388, 3522 and 3517 of 1997 and has come to the conclusion that the employment of contract labour by M/s. Sagar Construction in the job of loading and unloading of LPG at ONGC Limited, Hazira is not covered under the jurisdiction of Notification dated 9.12.1976 and 8.09.1994 issued by the Government of India under Section 10 of Contract Labour (Regulation and Abolition) Act, 1970. Hence, the Union can raise the issue before the Central Advisory Contract Labour Board, New Delhi for getting it prohibited/abolished under Section 10 of the Contract Labour Act, 1970. Regarding payment of wages at par with the regular employees to the contractual labours, the Union can raise its claim before the appropriate Court under Rule 25(2) (v) (a) of Contract Labour Central Rules, 1971."

This order is under challenge.

3. Mr. Mukul Sinha appearing on behalf of the petitioner has pointed out that the Respondent No.1 has committed error in relying upon the decision of this court in different petitions which have no connection with the present case. Not only that, the said decision of Respondent No.1 is directly having conflict with the decision of this court dated 09.02.1999 in Special CA 7520 of 1997 and Special CA 4508 of 1997. He submitted that this court had directed the petitioner Union to raise an industrial dispute and for that, the industrial dispute has been raised by the petitioner Union which ultimately decided not to refer it for adjudication. He submitted that the approach of Respondent No.1 amounts to

total non-application of mind in as much as the appropriate Government is required to scrutinise whether an industrial dispute exists or not as per the decision of the Apex Court in the case of Air India Statutory Corporation and in the case of Gujarat Electricity Board vs. their workmen. He also pointed out that contract system which has been entered into by the Respondent No.2 and 3 are purely a paper adjustment sham and camouflage. This was the grievance of the petitioner Union before this court when the earlier two petitions were filed by the petitioner Union and therefore considering these grievances of the petitioner Union, this court had directed the petitioner Union to approach under the machinery of Industrial Disputes Act, 1947. He also submitted that in the earlier petitions which were considered by Respondent No.1 wherein the petitioner Union was not a party to the said proceedings nor the concerned workmen were parties to the aforesaid proceedings, whatever be the decisions of Regional Labour Commissioner they have no binding effect on the present set of workmen. In any case, the Regional Labour Commissioner is not a competent authority to decide on this issue. He also submitted that the decision which has been taken by Respondent No.1 on merits and on having an opinion that the job of loading and unloading of LPG at ONGC, Hazira is not covered by the Notification dated 09.12.1976 or 08.09.1994. He also submitted that it is not open for the appropriate Government to suggest that the Union can raise the issue only under the Contract Labour Act, 1970 for the abolition of contract system. He also submitted that as per the ratio laid down in case of Gujarat Electricity Board vs. Hind Mazdoor Sabha reported in 1995 (2) LLJ Page 790 wherein it is decided that it is for the workmen to decide as to which of the two forums they wish to choose in view of the facts and circumstances of their own case and therefore, Respondent No.1 have no authority in law to have final opinion on the industrial dispute raised by the Union. Therefore, it is an illegal and erroneous order passed by Respondent No.1. He also submitted that in case of TELCO reported in AIR 1989 SC Page 1565, the Respondent No.1 had no authority and had no power to adjudicate the industrial dispute which had been raised by the petitioner Union. Mr. Thakkar denied that the job activity for which the Respondent Corporation has entered into contract with the concerned contractor is of a permanent and perennial nature and the same is an integral part of the business of the respondent Corporation. He also disputed that the present contract is camouflage, sham and bogus. He also disputed that the Notification dated 08.09.1994 is applicable to the facts of the present case. He

submitted that the applicability of the Notification dated 08.09.1994 is purely a question of fact which depends upon actual nature of job activities performed by the contractor and the same can be ascertained in greater detail only on the basis of leading of oral as well as documentary evidence by the parties before the competent authority. He also submitted that the petitioner Union have an alternative remedy of raising demand for abolishing contract and therefore Respondent no.1 is right in refusing to refer the matter for adjudication. He also submitted that there is no relationship between the Corporation and its employees as an employer and an employee and therefore he submitted that the order passed by Respondent No.1 is legal and valid and according to the scheme of Contract Labour Act, 1970.

4. I have heard both the learned advocates and I have perused the order passed by Respondent No.1 dated 18.08.1999. It is an undisputed fact between the parties that an industrial dispute had been raised by the petitioner Union by letter dated 23.06.1999 in pursuance to the order passed by this court in Special CA 4508 of 1999 and Special CA 7520 of 1999 dated 09.02.1999. Therefore, once this court has directed the petitioner Union to approach under the machinery of the ID Act, 1947 and in pursuance to that, the industrial dispute has been raised by the petitioner Union wherein it has been challenged that the contract system which has been adopted by the respondent Corporation is camouflage and sham as well as bogus. Therefore, the dispute in respect to regularising the services of the concerned workmen has been raised. It is also a case of the petitioner Union that the nature of work which has been performed by the concerned workmen is of a permanent and perennial nature and attached with main activities of ONGC Ltd. at Hazira. Therefore, all the concerned workmen are entitled to regularisation with the respondent Corporation. The Respondent No.1 has considered the decision of this court in respect to other petitions wherein the petitioner Union is not a party to the proceedings. The challenge of the petitioner Union was that the present contract system in respect to the job of loading and unloading of LPG at ONGC Ltd., Hazira is camouflage sham and bogus and therefore that question is required to be examined by appropriate adjudication by the appropriate Tribunal. On the contrary, Respondent No.1 has come to the conclusion that the Notification dated 09.12.1976 and 08.09.1994 is not covering the said activities and relied upon the decision of this court in respect to earlier petitions wherein the petitioner Union was not a party. Not only that, the concerned workmen

were not party to that proceedings. It is a settled law laid down by the Apex Court in case of Gujarat Electricity Board Ukai vs. Hind Mazdoor Sabha reported in 1995 (2) LLJ Page 790 which observed that if the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such a dispute is raised, it is not a dispute for abolition of the labour contract and hence, the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such a dispute is raised, the industrial adjudicator has to decide whether the contract is sham or not genuine. It is only if the adjudicator comes to the conclusion that the contract is sham that he will have jurisdiction to adjudicate the dispute. If however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act. Moreover, he can do so if the dispute is espoused by the contract workmen of the principal employer.

5. Considering the observations made by the Apex Court in Gujarat Electricity Board, the choice is with the Union or with the workmen in case an industrial dispute is raised with a contention that the present contract system is sham or bogus or not genuine then it is the duty of the respondent no.1 to refer for adjudication such disputes and there is no bar under the provisions of Contract Labour Act, 1970 for referring such disputes. These two remedies are open to the petitioner Union. In case when a contract is genuine and legal then the workmen or the Union have remedy to approach the appropriate Government under Section 10 of the Contract Labour Act, 1970 with a request to abolish the contract system. But if the contract itself is not genuine or is sham or bogus then certainly in such a situation an industrial dispute which has been raised by Union must have to be referred for adjudication before the appropriate Industrial Tribunal to have adjudication to the issue and in such a situation, the Industrial Tribunal can examine the contention of the petitioner Union and if it comes to the conclusion that the labour contract is not genuine then can pass appropriate order and grant relief to the workmen concerned. But if the Tribunal has come to the conclusion that the contract is genuine, legal and valid then refer the matter to the workmen to approach the appropriate Government under Section 10 of Contract Labour Act, 1970 for abolishing the contract system. Therefore, a choice is with the

workmen or the Union to raise an industrial dispute and therefore the reasons given by Respondent No.1 is not according to the law laid down by the Apex Court in case of Gujarat Electricity Board. It is also further required to be noted that when this court had passed an order on 09.02.1999 with a direction to the petitioner Union to approach under the machinery of Industrial Disputes Act and on that basis, the industrial dispute has been raised by the petitioner Union, then it is the duty of the Respondent No.1 to consider this aspect also which has not been taken into account by the Respondent No.1. On the contrary, Respondent No.1 has considered the decision of this court in Special CA 2573, 2574, 3388, 3522 and 3517 of 1997 wherein the petitioner Union was not a party and not only that even the concerned workmen were not party to the said proceeding. Therefore, it amounts to non-application of mind and considering the decision of this court in Special CA 7520 of 1997 and 4508 of 1997 dated 09.02.1999 also amounted to non-application of mind. The order passed by the Respondent No.1 is contrary to the scheme of Industrial Disputes Act as well as Contract Labour Act, 1970 and also it is contrary to the principles laid down by the Apex Court in GEB case. Therefore, this order Annexure I Page 13 dated 18.08.1999 is required to be set aside. Therefore, the order passed by Respondent No.1 dated 18.08.1999 is hereby quashed and set aside and it is directed to the Respondent No.1 to refer the industrial dispute, which has been raised by the petitioner Union by Charter of Demand dated 23.01.1999 against which ultimately a Failure Report was submitted by the Conciliation Officer (Central) dated 30th July, 1999 for adjudication, to the appropriate Industrial Tribunal within a period of three months from the date of receiving the certified copy of the said order.

6. Learned advocate Mr. Sinha has submitted that while issuing the Rule, this court had granted interim relief with a direction to the respondents to maintain status quo as on 21st September, 1999. Therefore, such status quo which has been granted by this court on 21.09.1999 may be directed to remain continued for four weeks from the date of Reference registered before the Industrial Tribunal. He submitted that at present all the concerned workmen are working and if status quo is not extended for a further period, then the services of the respondent workmen will be terminated by the respondents. Therefore, a protection is necessary in the interest of justice otherwise a Reference, referred for adjudication, becomes meaningless and the workmen will not get the fruit of such proceedings. Therefore, he

requested to extend the status quo for four weeks from the date when the Reference is registered before the Industrial Tribunal. Mr. Thakkar appearing on behalf of the Corporation has submitted that the Corporation is entitled to raise the contention before the Industrial Tribunal after the Reference has been referred for adjudication whether the Reference has been rightly referred or not. Considering the submission of both the learned advocates, it is directed to the respondents to maintain status quo which has been granted by this court on 21.09.1999 till the Reference has been registered before the Tribunal and thereafter such status quo shall remain in operation up to four weeks of the registration of the Reference before the Industrial Tribunal. However, it is made clear that both the parties have a right to raise all available contentions before the Industrial Tribunal in law and the Tribunal will consider such contentions which can be raised by either party before the Tribunal after the Reference has been referred for adjudication. In view of these observations and directions, the present petition is allowed. Rule made absolute. The office is directed to send immediately the writ of this order to Respondent No.1 without fail.

(H.K. RATHOD, J.)

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